

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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| In the Matter of                         | ) |                      |
|  | ) |                      |
| Telephone Number Portability             | ) | CC Docket No. 95-116 |
|  | ) |                      |
| CTIA Petitions for Declaratory Ruling on | ) |                      |
| Wireline-Wireless Porting Issues         | ) |                      |
| _____                                    | ) |                      |

**COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION**

Pursuant to section 1.2 of the Federal Communication Commission's (FCC or Commission) rules,<sup>1</sup> the FCC seeks comment on its Further Notice of Proposed Rulemaking<sup>2</sup> (FNPRM) stemming from issues presented in the Cellular Telecommunications and Internet Association's (CTIA) Petitions for Declaratory Ruling (Petitions).<sup>3</sup> In the FNPRM, the FCC seeks "comment on how to facilitate wireless-to-wireline porting if the rate center associated with the wireless number is different from the rate center in which the wireline carrier seeks to serve the customer." In addition, the FCC seeks comment on whether it should reduce the wireline four business day porting interval for inter-modal porting. The United States Telecom Association (USTA),<sup>4</sup> through the undersigned and pursuant to FCC Rules 1.415 and 1.419,<sup>5</sup> hereby provide its comments in this proceeding.

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<sup>1</sup> 47 C.F.R. § 1.2.

<sup>2</sup> See Telephone Number Portability, 68 Fed. Reg. 68,831 (Dec. 10, 2003) (Wireline-Wireless FNPRM).

<sup>3</sup> See Telephone Number Portability, CC Docket No. 95-116, *Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association* (filed Jan. 23, 2003); *Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association*, (filed May 13, 2003) (May 13<sup>th</sup> CTIA Petition).

<sup>4</sup> USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

<sup>5</sup> 47 C.F.R. §§ 1.415 and 1.419.

## BACKGROUND

In the *Telephone Number Portability*, First Report and Order,<sup>6</sup> the FCC promulgated rules and deployment schedules for number portability. The FCC ordered local exchange carriers (LECs) to begin the phased development of a long term service provider local number portability (LNP) method in the 100 largest Metropolitan Statistical Areas (MSAs). In addition, the FCC found that under section 251(b)(2) of the Communications Act of 1934, as amended (the Act),<sup>7</sup> that the public interest required Commercial Mobile Radio Services (CMRS) carriers to provide the same LNP obligations as LECs, even though CMRS carriers were not expressly mentioned in the statute. The FCC relied on its “independent authority” found in sections 1, 2, 4(i) and 332 of the Act, to require wireless number portability.<sup>8</sup> The FCC mandated that wireless carriers provide number portability by November 24, 2003.

In January 2003, CTIA filed its initial Petition with the FCC. CTIA asked the FCC to rule that wireline carriers are obligated to provide portability of their customers’ telephone numbers to CMRS providers throughout the CMRS provider’s “local” service area, when the CMRS provider’s local service area overlaps the wireline carriers’ rate centers. In addition, CTIA contends that some LECs have narrowly construed the number portability obligations with regard to CMRS providers, taking the position that portability is required only where CMRS providers have established a presence in the landline rate center where customers seek to port numbers from the LEC to CMRS providers.

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<sup>6</sup> *Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996)(First Report and Order).

<sup>7</sup> See 47 U.S.C. § 251(b) (stating [T]he duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission).

<sup>8</sup> First Report and Order at ¶¶ 152-53. See also 47 U.S.C. §§ 1, 2, 4(i) and 332.

CTIA filed its second Petition with the FCC in May of 2003. In its Petition, CTIA contends that the FCC must clarify and/or resolve a number of outstanding LNP issues before CMRS providers are required to provide LNP. CTIA specifically seeks resolution from the FCC: (1) as to what constitutes a reasonable length of time for a carrier to port a number to another provider, which at times may make E911 not available to the customer; and (2) as to what type of an agreement is necessary between CMRS providers and local exchange carriers (LECs) in order port numbers inter-modally.

On November 10, 2003, the FCC in a Memorandum Opinion and Order (Wireline-Wireless LNP Order) and FNPRM required inter-modal portability on November 24, 2003. The FCC concluded "that porting from a wireline carrier to a wireless carrier is required where the requesting wireless carrier's 'coverage area' overlaps the geographic location in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation."

USTA and CenturyTel, Inc. (CenturyTel) filed an Emergency Motion for Stay and Appeal of the FCC's Wireline-Wireless LNP Order in United States Court of Appeals for the D. C. Circuit, on November 21, 2003. USTA and CenturyTel alleged that the rules that the FCC put in place would cause severe harm to the industry. In addition, petitioners alleged that the FCC imposed this obligation without prior public notice and opportunity for comment as required under the Administrative Procedure Act. On December 4, 2003, the D.C. Circuit denied petitioners motion for not demonstrating the necessary irreparable injury for a stay pending review.<sup>9</sup> However, USTA and CenturyTel's appeal is still pending before the D.C. Circuit.

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<sup>9</sup> See *USTA v. FCC*, Case No. 03-1414, Order, (Dec. 4, 2003) (relying on *Wisconsin Gas v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)).

## DISCUSSION

### I. Wireless-Wireline LNP And Its Implications Upon Inter-carrier Compensation

The overarching question in the FNPRM is how the FCC should facilitate wireless-wireline LNP where the rate center associated with the wireless number and the rate center which the wireline carrier seeks to serve the customer do not match. In the wireline-wireless LNP Order, the FCC required wireline carriers to port numbers to wireless carriers “where the requesting wireless carrier's 'coverage area' overlaps the geographic location in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation.” Thereby maintaining the current rate center structure and holding that neither the wireline nor the wireless carriers will be held liable for failing to port numbers from distant rate centers. Thus, the issue that needs to be resolved is that wireline carriers’ route and rate calls with much more sensitivity to distance than wireless carriers, which dramatically impacts intercarrier compensation.<sup>10</sup>

USTA contends that the FCC has put the proverbial cart before the horse. Before the Commission mandates porting outside the rate center, the FCC must first resolve all issues associated with intercarrier compensation in the *Developing A Unified Inter-carrier Compensation Regime* proceeding.<sup>11</sup> USTA believes that a piecemeal approach to intercarrier compensation through scattered proceedings creates competitive uncertainty, loss of ILEC revenues, and impedes competition in the telecommunications marketplace. The FCC must address intercarrier compensation holistically in a deregulatory manner that allows incumbent

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<sup>10</sup> See *Telephone Number Portability*, Second Report and Order, CC Docket No. 95-116, 12 FCC Rcd 12281, 12283-84 (1997)) (CenturyTel). Wireline carriers route and rate calls based upon individual rate centers, where as wireless carriers calling plans are not limited by geographic scope to rate centers. The North American Numbering Council found that portability is limited by the boundaries of the ILEC rate center/rate district due to rating and routing concerns.

local exchange carriers (ILECs) to effectively compete. Moreover, until arcane Federal and State regulations are done away with, ILECs will continue to lose market share to wireless providers who can price their services under less onerous regulations. The purpose behind the Telecommunications Act of 1996 was to spur competition, not thwart it through legacy regulations that have outlived their usefulness in today's competitive marketplace. Hence, USTA urges the Commission to resolve all intercarrier compensation issues before requiring ILECs to accept numbers ported from outside their rate centers.

## **II. Number Porting Interval**

The FCC seeks comment on CTIA's request regarding the disparate time interval between wireline and wireless carriers for number porting.<sup>12</sup> CTIA contends that CMRS providers process number porting within one business day for wireless to wireless ports and that the length of time for wireline carrier number porting can be in some cases a week (as long as four business days). The FCC seeks comment as to what constitutes a reasonable length of time for a carrier to port a number intermodally to another provider.

USTA contends that the porting interval for wireline to wireless carriers should remain as currently set forth in FCC Rule 52.26(a).<sup>13</sup> Since 1997, wireline carriers have been porting numbers within three days after the firm order commitment (FOC) from the new service provider. Likewise, USTA believes that the porting interval should be three days after the FOC for new service for wireline to wireless and wireless to wireline. The FCC should maintain the

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<sup>11</sup> *Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd. 9610 (2001).

<sup>12</sup> May 13<sup>th</sup> CTIA Petition at 7. "The porting interval is the amount of time it takes for two service providers to complete the process of porting a telephone number when a customer changes providers but keeps the same telephone number."

current porting intervals “because these intervals were developed for application across the industry so that all carriers could operate under a consistent set of guidelines and provide accurate and dependable number porting.”<sup>14</sup> However, wireless to wireless carriers should be allowed shorter porting intervals, but the shorter porting interval should not be imposed upon wireline carriers.

Neither CTIA nor the FCC has shown that the porting interval is a factor as to whether a customer switches service providers. USTA believes that it is more important that the number be ported correctly to the customer. “[W]ireline carriers have facilitated millions of number ports to alternate service providers using the current industry standard for porting intervals.”<sup>15</sup> Thus, the FCC should leave the current porting interval in place, as it provides accurate and dependable number porting.

LECs have designed their systems based on the three day porting interval. If the FCC were to shorten the porting interval for LECs, it would require LECs to reconfigure their networks at a substantial cost.<sup>16</sup> Significant changes to ILECs Operational Support Systems and other systems, would require substantial costs to be borne by the wireline service provider. The potential costs that LECs would incur could conceivably be in excess of \$100 million, depending

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<sup>13</sup> 47 CFR § 52.26(a).

<sup>14</sup> Comments of SBC at 9 in the May 13<sup>th</sup> CTIA Petition proceeding.

<sup>15</sup> *Id.*

<sup>16</sup> See Comments of Verizon at 7; Qwest Corporation (Qwest) at 5; BellSouth Corporation (BellSouth) at 5; SBC Communications (SBC) at 8 in the May 13<sup>th</sup> CTIA Petition proceeding.

on the size and scope of the LEC upgrades.<sup>17</sup> Thus, if the FCC were to shorten the porting interval, it must provide LECs a cost recovery mechanism to implement the needed changes.<sup>18</sup>

### CONCLUSION

For the reasons set forth above, USTA urges the FCC to rule consistent with the arguments presented herein.

Respectfully submitted,



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<sup>17</sup> Verizon estimates that it will cost well over \$100 million dollars, while Qwest specified that it cost \$361,596,757 for it to initially implement number portability.

<sup>18</sup> See Comments of Verizon at 7; Qwest at 6; BellSouth at 5 in the May 13<sup>th</sup> CTIA Petition proceeding.